



August 23, 2013

Mr. Richard Keit, Managing Director
City of San Jose Successor Agency
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113

Dear Mr. Keit:

Subject: Other Funds and Accounts Due Diligence Review

The City of San Jose Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on May 8, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance was not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). As the Agency requested additional time on July 19, 2013 to complete necessary steps for the OFA DDR and Finance granted this request, Finance granted an additional 30-day window as opposed to returning the DDR in its entirety. Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Procedure 5 – Assets held by the Agency as of June 30, 2012. Reported assets held as of June 30, 2012 in the amount of \$371,585,179 should be adjusted to \$371,987,872. Specifically:
 - Prepaid housing administrative expenses in the amount of \$726,214. Pursuant to HSC section 34176 (a) (1), housing administrative expenses are the responsibility of the housing successor entity. The Agency included \$726,214 as a receivable in the OFA DDR. However, the successor housing entity returned the prepaid housing administrative expenses on October 31, 2012 and as a result, these balances were already captured in the Low and Moderate Income Housing Fund (LMIHF) DDR. Refer to Finance's LMIHF DDR Meet and Confer determination letter dated March 14, 2013. Therefore, these balances should not be double counted in the OFA DDR's asset balance as of June 30, 2012. Finance's adjustment will be recognized as both a reduction to the asset balance in Procedure 5 and a corresponding reduction in Procedure 7 due to the item being noncash, see below.

- o Cash in the amount of \$164,727. In June 2012, the Agency received a refund of \$1,070,968. Included in this amount is a return of \$906,241 in bond proceeds and \$164,727 in non-bond proceeds. The bond proceeds were recognized in the OFA DDR; however, it does not appear the non-bond proceeds were accounted for. As such, \$164,727 will be added to the total asset balance in Procedure 5. The same amount will be added to Procedure 9 to allow for the retention of these funds due to the Agency's funding deficiency, see below.
- o Lease revenue collected during the period of January 1, 2011 through June 30, 2012 totaling \$964,180. In a letter dated March 21, 2013, the California State Controller's Office (SCO) ordered a number of assets to be transferred back to the Agency. These properties earned lease revenue while in the possession of the City of San Jose (City) totaling \$964,180.

The City's supporting documentation for the \$964,180 in lease revenues also included expenses of \$160,254 for property maintenance. However, these expenses were not included on a Recognized Obligation Payment Schedule, and therefore, cannot be netted against the total lease revenue adjustment. Should these expenses be valid obligations of the Agency, the expenses should be placed on a ROPS. As such, the \$964,180 in lease revenue will be added to the total assets balance in Procedure 5. The same amount will be added to Procedure 9 to allow for the retention of these funds due to the Agency's funding deficiency, see below.

Therefore, Finance is making an adjustment of \$402,693 ($-\$726,214 + \$164,727 + \$964,180$) to accurately reflect the June 30, 2012 OFA asset balance.

- Procedure 7 – Non-cash or cash equivalent assets. Non-cash asset balances in the amount of \$352,177,603 should be adjusted to \$351,451,389. Our review indicated that \$726,214 should not be included in the OFA DDR, see above.

Further for Procedure 7, Finance noted a discrepancy between the SCO's asset transfer determination letter dated March 21, 2013 and the County of Santa Clara Auditor-Controller's Agreed Upon Procedures (AUP) report dated October 5, 2012. The discrepancy stems from two properties that were transferred to the City in consideration for the County's acquisition of Old City Hall, which was permitted but not required pursuant to a Stipulated Settlement Agreement entered March 16, 2011. The specific two properties are 500 S. 1st Street and the Fairmont Garage Parking Structure. Neither the SCO nor the OFA DDR orders these properties returned to the Agency. However, the County's AUP does order the properties returned to the Agency. To the extent these properties were not transferred to the City pursuant to an enforceable obligation or as a government purpose as defined in 34181 (a), the City should transfer these properties back to the Agency for inclusion in the Long Range Property Management Plan.

- Procedure 9 – Balances needed to satisfy enforceable obligations for fiscal year 2012-13. Balances allowed to be retained in the amount of \$1,711,899 should be increased to \$2,840,806. Our review indicated that \$164,727 in unaccounted for cash and \$964,180 of lease revenue were not included in the balance as of June 30, 2012, see above. Therefore, the balance in Procedure 9 will be increased by \$1,128,907 to allow for the retention of these funds due to the Agency's funding deficiency.

If you disagree with Finance's adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's OFA balance available for distribution to the affected taxing entities is zero (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Adjustment to June 30, 2012 balance:	\$ 402,693
Adjustment to non-cash assets balance:	726,214
Adjustment to balance needed to be retained:	(1,128,907)
Total OFA available to be distributed:	\$ -

Absent a Meet and Confer request, HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, please provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

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Pursuant to HSC section 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Abraham M. Andrade, Jr., Chief Financial Officer, City of San Jose
Ms. Irene Lui, Controller Treasurer, County of Santa Clara
California State Controller's Office